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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. A-692

WESTMINSTER PRESBYTERIAN CHURCH OF ENID, ET AL.,
Petitioners,

VERSUS

PRESBYTERIAN OF CIMARRON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF OKLAHOMA

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March, 1974

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. 235-0030

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.D, ET AL.,

CIMARRON,
ndent.

WRIT OF CERTIORARI TO THE CRT FOR THE STATE OF OKLAHOMA

. etitioners pray that a Writ of Certiorari issue to re-.iew the Judgment herein of the Supreme Court for the State of Oklahoma filed of record on the 9th day of October, 1973, which became a final Judgment of that court.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of Oklahoma is reported as *Presbytery of Cimarron* v. *Westminster Presbyterian Church of Enid, et al.*, at 515 P.2d 211.

JURISDICTION

The Judgment of the Supreme Court of Oklahoma became final in Case No. 45435, decided October 9, 1973. No Petition for Rehearing was filed and that case is cited at 515 P.2d 211. The jurisdiction of this Court has been in-

voked pursuant to Title 28 U.S.C., §1257(3). All issues presented herein were raised below as indicated by the Opinion of the Supreme Court of Oklahoma and those issues involve the right, title and interest in property; and the decision of the Supreme Court of Oklahoma was adverse to the record title holder.

Mr. Stephen Jones is a member in good standing licensed to practice before this Honorable Court.

QUESTIONS PRESENTED

I. The title to property located in any state is to be governed by the laws of that state and not by ecclesiastical court or constitution.

II. Under the First Amendment separation of religion and state clause, may a state court follow ecclesiastical law in determining property disputes between religious bodies when church law is directly contra to state civil law and when this Court has ruled that ecclesiastical law does not apply?

III. The affiliation of a local church with a national organization of churches does not operate as a transfer of title to property held by the local church.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Title 60 §331:

"Property Acquired, How Property is acquired by:

1. Occupancy.
2. Accession.
3. Transfer.

4. Will; or

5. Succession."

United States Constitution, Amendment Fourteen:

". . . (n)or shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction equal protection of the laws."

Title 18 O.S. §564.1:

"Extinct church, religious corporation, etc.—Preservation and protection of property

"The property, both real and personal, belonging to or held in trust by or for any church, religious corporation, association, organization, or society, that has or shall become extinct, or that has or shall cease to function and use its property, shall be preserved and protected from waste and dilapidation."

STATEMENT OF THE CASE

The questions involved in this case request this Court to reach a decision as to whether or not a supervisory church may acquire title to real property held by a subordinate church merely by dissolving the subordinate, which is the record title holder to the property in question, and then by directive requiring the subordinate to transfer all property, both real and personal, to the supervisory church.

Presbytery of Cimarron, Respondent, is a judicatory body of the United Presbyterian Church in the United States of America.

Westminster Presbyterian Church of Enid, an Oklahoma corporation, is a local independent church, owning

property, which affiliated with the national Presbyterian Church and which, later disaffiliated against the wishes of the Persbytery of Cimarron. The corporation has survived the affiliation.

Respondent brought suit in the State courts of Oklahoma against the Petitioner herein seeking a declaratory judgment that it was the owner of all assets of the Petitioner following its dissolution by the Presbytery of Cimarron. At trial, after Respondent rested its case, the court sustained Petitioner's Demurrer to the Evidence. Respondent appealed from that decision and the Supreme Court of the State of Oklahoma reversed and remanded.

Two parcels of Enid real estate, one parcel being conveyed to, and used by, an Enid Presbyterian Church as its headquarters and sanctuary for worship services; and the other was used as its manse or minister's residence.

The two parcels of property were granted to the Westminster Presbyterian Church of Enid, Oklahoma, its successors and assigns, and it has at all material times been held by and in possession of that church.

The Enid church later became incorporated as an Oklahoma corporation for the purpose of forming a local church for religious worship affiliated with, and a part of, the Presbyterian Church of the United States of America.

In 1963, the Enid church purchased the manse property, and, as a part of the consideration therefor, executed and delivered a promissory note, secured by a real estate mortgage on the property, in the amount of $6,000.00.

Thereafter, the Enid church suffered a financial crisis over which a satisfactory disposition was never achieved. Thereafter, Respondents National Missions Committee recommended that the Enid church be dissolved, and a special meeting of the Presbytery of Cimarron, as a judicatory of the United Presbyterian Church of the United States of America, was called for November 7, 1969. At this meeting, a motion was made, seconded and adopted, which mandated the following actions, among others: (1) that the final worship service of the Enid church be held December 28, 1969; (2) that said church's session issue letters to the members of its congregation authorizing transfer of their membership to other congregation of the United Presbyterian Church in the United States of America; and (3) that the trustees of the Enid church transfer to Plaintiff all properties then held by that church.

The above mandate was not acceptable to the Enid church and that church failed to transfer its properties to Respondent herein and instead by vote of its trustees and session (or local governing body) the church became an autonomous Presbyterian church.

Subsequent thereto, an action was filed in Garfield County, Oklahoma, seeking a declaratory judgment against Petitioner herein determining that Respondent, as the proper judicatory body under the Constitution of the United Presbyterian Church in the United States, is entitled to have, receive and hold all real and personal property of the defendant, and ordering defendant's Board of Trustees to forthwith execute and deliver to plaintiff deeds and other proper instruments necessary to transfer to

plaintiff the record title to all of defendant's property, records, *etc.*

A subsequent non-jury trial was had wherein at the close of Respondent's evidence, Petitioner demurred to it and the court entered judgment sustaining the demurrer.

Subsequent thereto, the Supreme Court of Oklahoma reversed that trial court determination and remanded with instructions. This Petition for Certiorari follows that adverse decision.

REASONS FOR GRANTING THE WRIT

I.

THE TITLE TO OKLAHOMA PROPERTY OR PROPERTY LOCATED IN ANY STATE IS TO BE GOVERNED BY THE LAWS OF THAT STATE AND NOT BY ECCLESTIAL COURT OR CONSTITUTION.

The Petitioner herein has at all times been in possession and record title holder of the two parcels of property involved in this state court action. The Petitioner has not signed a contract to sell this property to the Respondent, nor has Petitioner in any way indicated that Respondent has any legal right to the property in question.

It has been universally held that property is distributed or transferred only in accordance with the laws of the situs.

> "The title to land can be acquired and lost only in the manner prescribed by the law of the place where such land is situated." *United States* v. *Crosby*, 7 Cranch 115, 3 L.Ed. 287.

The laws of the State of Oklahoma authorize property to be acquired in five specific ways through Title 60 O.S. §331:

> "Section 331. Property acquired, how Property is acquired by:
>
> 1. Occupancy
> 2. Accession
> 3. Transfer
> 4. Will; or,
> 5. Succession."

The Respondent can claim no right under any of the above five quoted methods whereby property is acquired in the State of Oklahoma. The Respondent can only claim that this property owned by the Petitioner and possessed by the Petitioner now belongs to the Respondent through some ecclesiastical determination which totally disregarded the transfer laws of the State of Oklahoma.

II.

UNDER THE FIRST AMENDMENT SEPARATION OF RELIGION AND STATE CLAUSE, MAY A STATE COURT FOLLOW ECCLESTIAL LAW IN DETERMINING PROPERTY DISPUTES BETWEEN RELIGIOUS BODIES WHEN CHURCH LAW IS DIRECTLY CONTRA TO STATE CIVIL LAW AND WHEN THIS COURT HAS RULED THAT ECCLESTIAL LAW DOES NOT APPLY?

The cases have been unanimous, including the early case of *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871), which has been much relied upon by the Respondent and the courts of Oklahoma. That case has been

the basis for much of the court determinations involving ecclesiastical government and rule in the United States. However, what the Respondent has failed to recognize in quoting *Watson* is simply that *Watson* does not apply to property.

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine *which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. . . .*" *Watson* v. *Jones, supra.* (Emphasis added.)

This case likewise cited by the Respondent below held to the theory that:

> "Whenever the question of discipline or of faith or ecclesiastical rule, custom or law have been decided by the highest church judicatory to which the matter has been carried, the legal tribunals must accept such decision as final and binding on them in their application to the case before them." *Watson* v. *Jones, supra.*

This case is a simple case of who is the proper owner of land situated in the State of Oklahoma when the title and possession remain in the Petitioner. It is true that the highest church judicatory has ruled that the Petitioners must turn over this property to the Respondent, but is that in fact binding upon the court? *Watson* v. *Jones, supra,* quoted above, applied to questions of discipline or of faith or ecclesiastical rule, custom or law and that is all they applied to. *Watson,* by the above language, specifically excluded property from judicatory determination.

The Supreme Court of the United States in *Watson* v. *Jones, supra*, excluded property from ecclesiastical rule and the State courts of Oklahoma have likewise done so.

> "(1, 2) Civil courts will not review acts of religious organizations relating solely to internal ecclesiastical affairs for the sole purpose of ascertaining whether they are in accord with the policy, discipline, or usages of the organization. *Civil courts will inquire into the regularity of church proceedings only where property rights are involved. First English Lutheran Church* v. *Evangelical Lutheran Synod of Kansas*, 10th Cir., 135 F.2d 701; *Cage* v. *Cansler, et al.*, 119 Okla. 36, 248 P. 612; Ibid., 130 Okla. 70, 265 P. 112.
>
> "(3, 4) *Civil courts will exercise equitable jurisdiction in a church controversy for the protection of civil or property right. . . .*" *First Lutheran Church* v. *Bloch*, 159 P.2d 1006. (Emphasis added.)

Both the Supreme Court of the United States and the Supreme Court of the State of Oklahoma have specifically held, through the above cited cases, that civil courts are not bound by ecclesiastical determinations which affect property rights.

The Petitioner is the record title holder of the two parcels in question herein and also in possession of that property which they hold in conformity to the statutes of the State of Oklahoma. Those statutes have likewise not been repealed by the State of Oklahoma and the Respondents cannot by ecclesiastical ruling deprive these Petitioners of that property in violation of the statutes of Oklahoma, the Fourteenth Amendment to the United States

Constitution, the case law of the Supreme Court of the United States, and the case law of the State of Oklahoma.

To so hold would bring chaos upon the property laws of the State of Oklahoma.

III.

THE AFFILIATION OF A LOCAL CHURCH WITH A NATIONAL ORGANIZATION OF CHURCHES DOES NOT OPERATE AS A TRANSFER OF TITLE TO PROPERTY HELD BY THE LOCAL CHURCH.

After incorporating within the State of Oklahoma, the Westminster Presbyterian Church, of Enid, Oklahoma, chose to affiliate with the national organization. By that affiliation the local church nonetheless maintained its independent character and without specific contractual provisions to the contrary the local church is authorized to withdraw at any time.

> "The issue now presented has been before the civil courts in a number of cases wherein Lutheran church laws were involved. In every case which has come to our attention it is held that the majority faction of a local Lutheran church may sever its synodical relation; that judgments are upon the assumption or finding of the civil courts that according to the evangelical Lutheran polity, the *church is independent in government and does not lose its character as such by voluntary association* with a synod. In some of the cases, the exact procedure followed by the Oklahoma City church was held sufficient. *Lawson, et al.*, v. *Klovenson, et al.*, 61 Illinois 405, is a case wherein withdrawal of the local congregation from the synod to which it belonged without the approval and in the face of its expressed denial by the synod was held effective." *First English*

Lutheran Church v. *Bloch, supra,* at 1012. (Emphasis added.)

Furthermore, the logic of *Watson* v. *Jones, supra,* has no application to this case. In *Watson, supra,* two rival factions of the same local congregation were attempting to take over the church property. In that case the court could not award the property to the faction holding the title because both competing factions were of the same local organization.

Respondents rely upon *Watson* v. *Jones, supra,* which is not similar herein and they likewise rely upon 18 O.S. §564.1 which applies to and is captioned "Extinct Church, Religious Corporation, *etc.* Preservation and Protection of Property." *Watson, supra,* as well as that statute lends no aid to the Respondents herein as the local organization does not have two competing interests nor is the local organization extinct by any stretch of the imagination. The facts of the case are simply that the local church by national directive was told to cease functioning as a church and turn over all properties to the national church. The local church decided they would not abandon their organization, therefore, they chose to and did disassociate with the national church.

The local church only seeks herein to be allowed the opportunity to use the property they own and which they are in possession of. They had a right to join the national church and they chose to do so, they had a right to disassociate themselves from the national church and they likewise chose to do that. They did not and have not chosen to turn over their property to the national church.

Should the congregation of the Westminster Presbyterian Church of Enid, *et al.*, be required to transfer their property because of ecclesiastical rulings, that property has been taken contrary to the laws of the State of Oklahoma and due process.

CONCLUSION

For the reasons above stated, the Petition for Writ of Certiorari should be granted.

Respectfully submitted

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Enid, Oklahoma 73701

Counsel for Petitioners

of Counsel:

JONES, WILLIAMS, BANE, & KLINGENBERG

March, 1974

APPENDIX

Supreme Court of the United States

No. A-692

WESTMINSTER PRESBYTERIAN CHURCH OF ENID, et al.,

v.

PRESBYTERY OF CIMARRON

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 5, 1974.

/s/ Byron R. White
Associate Justice of the Supreme Court of the United States

Dated this 18th day of January, 1974

[APPENDIX]

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
OCT - 9 1973
Ross N. Lillard, Jr.
Clerk

PRESBYTERY OF CIMARRON,

Appellant,

vs.

No. 45,435

WESTMINSTER PRESBYTERIAN CHURCH OF ENID, and L. P. COREY, PAUL R. SPRUILL, C. R. WHITSETT, RALPH ALFRED, CLAIRE MARTIN and ALBERT W. STUERMAN, TRUSTEES OF WESTMINSTER PRESBYTERIAN CHURCH OF ENID,

Appellees.

SYLLABUS

1. In the absence of any law to the contrary, where a local unaffiliated religious congregation acquires real estate, for purposes connected with its worship and operation, by an ordinary general warranty deed setting forth the church name it has assumed as the grantee, said deed is a conveyance to the congregation, and constitutes no muniment of title to any individual member or particular group of members of said congregation.

2. Where such a local church affiliates with a national church organization having a hierarchical, or Presbyterian, form of government, it does so with an implied

consent to said government and is bound by said national church's constitution, including provisions therein relating to the power of its judicatories over the holding, use, and disposition of its property.

3. Where such a local church acquires, in its name, one parcel of real estate for such purposes before affiliating with the national organization of the Presbyterian Church in the United States of America, and another parcel of real estate for its pastor's residence after said affiliation, thereafter accepts financial aid from the U.S.A. Church through its regional judicatory or Presbytery, and later, after financial difficulties, the Presbytery orders dissolution of the local congregation and the transfer of said property to it, the local congregation is bound by said order where regularly entered under the U.S.A. Church's form of government, and said order may be enforced by the courts as against a group of the congregation's members claiming ownership of said property and seeking to retain its possession, use, and control.

APPEAL FROM THE DISTRICT COURT OF GARFIELD COUNTY, OKLAHOMA

Honorable J. Russell Swanson, Judge

Action by a Presbytery of the United Presbyterian Church of the United States of America, as plaintiff, against a group of former members of a dissolved Enid Presbyterian Church, denominating themselves "Westminster Presbyterian Church of Enid, Oklahoma", as defendants, for a declaratory judgment entitling plaintiff to the Enid Church property and requiring transfer of its title to plaintiff. After the sustaining of the defendants' demurrer to plaintiff's evidence, and the overruling of its motion for a new trial, plaintiff appealed.

[APPENDIX]

REVERSED AND REMANDED WITH DIRECTIONS

Joe H. Glasser,
McKeever, Glasser, McKeever & Conrad,
Enid, Oklahoma, For Appellant,

Stephen Jones,
Jones, Atkinson, Williams, Bane & Klingensberg,
Enid, Oklahoma, For Appellees.

BARNES, J.:

The present case involves a dispute between the parties as to the ownership of property, primarily two parcels of Enid real estate. One parcel had been conveyed to, and used by, an Enid Presbyterian Church as its headquarters and sanctuary for worship services; and the other was used as its manse or minister's residence.

The instrument by which the sanctuary property was conveyed to the Enid Church was a general warranty deed, conventionally worded in all material respects, executed and delivered in 1928 by Mr. and Mrs. Hutchison, of St. Louis, Missouri. The grantee was The Westminster Presbyterian Church of Enid, Oklahoma, its successors and assigns.

Within less than sixty days after this deed was filed for record, the Enid Church was incorporated as an Oklahoma corporation for the purpose [according to its Articles of Incorporation] of forming "a local church for religious worship *affiliated with, and a part of, the Presbyterian Church of the United States of America.*" [Emphasis added.]

Although the record does not disclose the exact date that this Enid Church became affiliated with, and a part of, the Presbyterian Church of the United States of America, this is undisputedly alleged to have occurred later in the same year of its incorporation. For some time after its affili-

ation with said national Presbyterian organization, the Enid Church was a part of what was designated in the hierarchical structure of the Presbyterian Church of the United States of America as the "Enid Presbytery", but at some time before this action arose—presumably about the time that the Presbyterian Church of the United States in America became what is now known as the "United Presbyterian Church in the United States of America"—the Enid Presbytery became a part of the larger presbytery which, since some time before this action was filed, has been known as "Presbytery of Cimarron", hereinafter referred to as "plaintiff".

The Enid Church was also what was known in the national Presbyterian organization as a "National Mission Aid Church", and, through the Presbytery, the Enid Church received funds contributed for national missions by other churches in the Presbytery. Since 1958, the Enid Church has, at its request, received a total of $27,920.00 in such funds for use in paying salaries and housing allowances of its ministers.

In 1963, the Enid Church purchased the manse property, and, as a part of the consideration therefor, executed and delivered a promissory note, secured by a real estate mortgage on the property, in the amount of $6,000.00.

Thereafter, on the weekend of July 4, 1969, the Enid Church's minister contacted the Chairman of the plaintiff Presbytery's National Missions Committee and requested a special meeting with said Committee to deal with a financial crisis in said Church. Thereafter, the Enid Church's minister and members of its Session had several meetings with this Committee, but, despite the efforts of some of those concerned, a satisfactory solution of the Church's financial problems was never discovered or agreed upon. Thereafter, plaintiff's National Missions Committee recommended that the Enid Church be dissolved, and a special meeting of the plaintiff Presbytery, as a judicatory of the

United Presbyterian Church in the United States of America, was called for November 7, 1969, to act on this recommendation. At this meeting, a motion was made, seconded and adopted, which mandated the following actions, among others: (1) That the final worship service of the Enid Church be held December 28, 1969; (2) that said Church's Session issue letters to the members of its congregation authorizing transfers of their memberships to other congregations of the United Presbyterian Church in the United States of America; and (3) that the Trustees of the Enid Church transfer to plaintiff all properties then held by that Church.

The failure of the Enid Church to transfer its properties to plaintiff gave rise to the latter's institution of the present action on June 11, 1970, against the Enid Church and its Trustees, hereinafter collectively referred to as "defendant". In the petition it filed in the trial court, plaintiff alleged some of the foregoing facts and also alleged [in brief substance] that it is a judicatory body of the United Presbyterian Church in the United States of America, under whose Constitution, first promulgated in 1788 [with later amendments not material here], its affairs are administered from the local through the sectional, regional and national levels. Plaintiff attached to, and incorporated by reference in, its petition a copy of said Constitution and quoted from it the following provisions:

> "A. 'A particular church can be organized only by the authority of the Presbytery.' (34.02)
>
> "B. 'The Presbytery has power to receive and decide appeals, complaints and references brought before it in an orderly manner . . .; TO DISSOLVE CHURCHES (emphasis added) . . .' (42.07)
>
> "C. 'Whenever . . . a particular church is formally dissolved by the Presbytery . . . such property as it may have, both real and personal, shall be held, used and applied for such purposes and trusts as the Pres-

bytery may direct, limit and appoint or such property may be sold or disposed of as the Presbytery may direct in conformity with the Constitution of the United Presbyterian Church in the United States of America.' (62.11)

"D. 'When a church is dissolved the Presbytery with which it was connected shall take possession of its records and have jurisdiction over its members. . . .' (82.06)"

In its petition, plaintiff further alleged that it is the duly authorized and acting successor to the Enid Presbytery, which authorized the defendant's organization in the year of the latter's incorporation [under Oklahoma statutes] and that [under the above quoted Constitution] plaintiff is therefore the authority to "hold, use and apply", sell or dispose of both real and personal property of the formally dissolved Presbyterian Church.

Plaintiff further alleged that, as a result of action taken at its November 7, 1969 Presbytery meeting, the Clerk of defendant's Session was directed to transfer all its records, books, etc., to plaintiff's Stated Clerk, and defendant's Trustees were directed to inventory the property held by defendant and to transfer its title to plaintiff. Plaintiff further alleged that, though it had made demand upon defendant's Board of Trustees, through its Chairman, to comply with this direction and to execute and deliver to it proper conveyances of said property, said Trustee had failed and refused to do so.

The prayer of plaintiff's petition was for the court to render a declaratory judgment against defendant, determining that plaintiff, as the proper judicatory body under the Constitution of the United Presbyterian Church in the United States of America, is entitled to have, receive and hold all real and personal property of the defendant, and ordering defendant's Board of Trustees to forthwith ex-

ecute and deliver to plaintiff deeds and other proper instruments necessary to transfer to plaintiff the record title to all of defendant's property, records, etc.

In its answer, the defendant Enid Church agreed that the parties' controversy, as to their respective rights and title to the property involved, should be settled by a declaratory judgment. But as to its rights and title, defendant stood on its muniments of record title, alleged that by vote of its Trustees and Session [or local governing body] it had become an autonomous Presbyterian Church, and it denied that there was any basis in its deeds to the properties, in State law, or in the Constitution of the "general church", for "imposing an implied trust" on the properties.

At the subsequent non-jury trial, plaintiff introduced in evidence, among other things, the aforementioned conveyances and the Constitution of the United Presbyterian Church in the United States of America [called the "Book of Order"], and established by stipulation and evidence [including some testimony] that the remaining balance of defendant's indebtedness in the amount of $2,404.83 had been paid through action taken, and money furnished, by plaintiff early in 1970, and that, some two weeks after this suit was filed, some members of the Enid Church's congregation met with four of its six Trustees and four of its six Elders and voted to "declare ourselves an autonomous Presbyterian Church known as the Westminster Presbyterian Church of Enid, Oklahoma", and expressed their desire to keep the subject church property.

At the close of plaintiff's evidence, defendant demurred to it and the court entered judgment sustaining this demurrer. After the overruling of its motion for a new trial, plaintiff lodged the present appeal.

Plaintiff's position in urging reversal of the trial court's judgment is, generally, that said order and/or judgment is contrary to the basic precepts laid down in the early case

of Watson v. Jones, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871), which most state and federal courts have recognized as the landmark decision in controversies of this character. Although plaintiff recognizes that the facts of this case make it one of first impression in this jurisdiction, it maintains that, under the weight of decisional law and the United States Constitution, the trial court should have recognized that the hereinbefore quoted provisions of the Constitution of the United Presbyterian Church in the United States of America control, and that, under those provisions, the court should have rendered a declaratory judgment in its favor.

It is the defendant's position, on the other hand, that the Constitution of the United Presbyterian Church in the United States of America has nothing to do with the title to the subject property, but that said title, under Oklahoma's statutes, can only be vested in the aforenamed corporation, "The Westminster Presbyterian Church of Enid, Oklahoma", which is still in existence, despite the hereinbefore described action of the plaintiff pursuant to its called meeting of November 7, 1969.

Watson v. Jones, supra, arose out of a schism in Louisville's Walnut Street Presbyterian Church, which, after its organization in 1842, was a part of the same national Presbyterian organization involved here, then called the "Presbyterian Church of the United States." One group of the Walnut Street Church's members [two of which claimed to be church Trustees and another two claiming to be Elders thereof] renounced the authority of the various judicatories of the Presbyterian Church of the United States and aligned themselves with church authorities not connected with that organization. After members of this group had, by order of the General Assembly of the Presbyterian Church of the United States, been dropped from the roll of Elders of said Church, another group, alleging that they were members and officers of the Walnut Street congregation and also members in good standing of the Presbyterian

Church of the United States, instituted Watson v. Jones as plaintiffs, to enjoin the aforementioned dissident group from taking possession of the Walnut Street church property, as they allegedly threatened to do [among other things], and for other relief. Without going into all the facts and the outcome of the case, we think for our purposes it is only necessary to allude to the following portions of the United States Supreme Court's opinion in that case:

"* * * * *

"The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies, may, so far as we have been able to examine them, be profitably classified under three general heads, which of course do not include cases governed by considerations applicable to a church established and supported by law as the religion of the state.

"1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, *by the express terms of the instrument devoted to the teaching, support or spread of some specific form of religious doctrine or belief.*

"2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

"3. The third is *where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or*

less complete in some supreme judicatory over the whole membership of that general organization.

"* * * * *

". . . the third of these classes of cases is the one which is oftenest found in the courts and which, with reference to the number and difficulty of the questions involved, and to other considerations, is every way the most important.

"It is the case of property acquired *in any of the usual modes for the general use of a religious congregation which is itself part of a large and general organization* of some religious denomination, *with which it is more or less intimately connected by religious views and ecclesiastical government.*

"* * * * *

"In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of law, and supported by a preponderating weight of judicial authority is, that, *whenever the questions of . . . ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final,* and as binding on them, in their application to the case before them.

"* * * * *

"In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. *The right to organize voluntary religious associations* to assist in the expression and dissemination of any religious doctrine,

and to create tribunals for the decision of controverted questions of faith within the association, and *for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.* But *it would be a vain consent* and would lead to the total subversion of such religious bodies, *if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed.* It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases *of ecclesiastical cognizance,* subject only to such appeals as the organism itself provides for.

"Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches) has a body of constitutional and ecclesiastical law of its own, to be found in their written organic law, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so.

"* * * * *

". . . the appellants in the case presented to us have separated themselves wholly from the church organization to which they belonged when this controversy commenced. They now deny its authority, denounce its action and refuse to abide by its judgments. They have first erected themselves into a new organization, and have since joined themselves to another totally different, if not hostile, to the one to which they belonged when the difficulty first began. Under any of the decisions which we have examined, the appellants, in their present position, have no right to the property, or to the use of it, which is the subject of this suit." [Emphasis added.]

Defendant recognizes, and cites cases for, the proposition that civil courts are now restricted in assuming jurisdiction of church controversies, involving religious doctrine, by the First Amendment to the United States Constitution; but it says the courts will assume jurisdiction and inquire into the regularity of church proceedings where property rights are in jeopardy.

The present case does not involve religious doctrine. It involves religious "polity", or, as Webster's Dictionary defines the latter word: "form of government". And the ultimate issue is whether the Constitution of the United Presbyterian Church in the United States of America, a church with the hierarchical form of religious government, controls, or whether Oklahoma's conveyancing and property laws control.

Defendant's argument, citing the three possible approaches that courts may use in controversies involving church property [discussed in Eldership v. Church of God, 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582] urges that under both the "Watson approach" and the "formal title" doctrine [using "neutral principles of law developed for use in all property disputes", Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian

Church, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658, 665] title to the property must be upheld in defendant [as the trial court's judgment had the effect of doing]. As we interpret the authorities, this Court is not free to do this. And it is our opinion, in accord with our quotation from Watson v. Jones, supra, that when the Westminster Presbyterian Church of Enid, Oklahoma—or its members for it—petitioned the Presbyterian Church of the United States in America for, and was granted, affiliation with that national church organization, it impliedly and in effect [if not expressly] agreed to abide by the national Church's constitution and regulations. As, at the time the present controversy arose, the Enid Church was an integral part of the larger church organization, it is bound, under that church's hierarchical form of government or polity, by its constitution and its judicatories' decisions. We think this conclusion is supported by the weight of all the better-reasoned decisions. In this connection, notice Presbytery of Indianapolis v. First United Presbyterian Church, 143 Ind.App. 72, 238 N.E.2d 479, reh., 240 N.E.2d 77. While we are not prepared to, and need not, say, as some might infer from some of the language in the cited case [238 N.E.2d 479, 486] that the form, or nature, of the grant under which the affiliating local church goes into possession of the property involved is immaterial [in this connection, notice Doughty v. Herr, 97 Ind.App. 427, 185 N.E. 657, discussed in Merryman v. Price, Ind.App., 259 N.E.2d 883], the deeds by which title was acquired in the present case were ordinary warranty deeds without condition or limitation" [see Ramsey v. Hicks, 174 Ind. 428, 91 N.E. 344, 92 N.E. 164, discussed in the Presbytery of Indianapolis case, supra,] and contained no "express terms" devoting the properties thereby conveyed to any person, group of persons, either individually or in a trust or fiduciary capacity—or to "some form of religious doctrine or belief" [Watson v. Jones, supra,] other than may be inferred from the name of its grantee. It is our opinion that Doughty v. Herr and Merryman v. Price, supra,

are both inapposite to, and are not persuasive in, the resolution of the present controversy because of factual differences. It is also our opinion that if, when a local church voluntarily becomes an integral part of a national hierarchical church, it is thereafter bound by the latter's constitution and its judicatories' decisions, the holding of its property is likewise controlled by such provisions of said constitution and the authorized mandates of said judicatories [as are applicable thereto] without regard to the so-called "trust" aspects of the situation, such as noted in the Indianapolis Presbytery case [238 N.E.2d 479, 487] and Cumberland Presby. Ch. v. Red Bank Cum. P.C., 58 Tenn. App. 424, 429, 430 S.W.2d 879, 882.

Therefore, under our theory of the controlling considerations in this case, it is unnecessary to discuss defendant's contention that 18 O.S. 1971, §§ 564.1 and 564.2, at least implies such recognition.

Nor do we find the cases of Presbyterian Church in the United States v. Eastern Heights Presbyterian Church, and Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 224 Ga. 61, 159 S.E.2d 690, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658, 225 Ga. 259, 167 S.E.2d 658, of significant assistance in this case. As already noted, there is no recital in either of the deeds to the two parcels of subject real estate that in any manner restricts their use; and there is no "departure-from-doctrine element" involved in this controversy. From all that appears from the record, the schism here [if it may be correctly called that] resulted from financial difficulties, rather than from any differences in religious beliefs or claim that the United Presbyterian Church in the United States of America had departed from the doctrine its predecessor, the Presbyterian Church of the United States, had subscribed to it, at the time the Enid Church affiliated with it. We are not certain exactly what the Georgia court meant when it said in the Eastern Heights case, supra [167 S.E.2d 658, 659], that the implied trust theory there involved was

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and by its mandate attempt
case.

It is therefore our opinion th
sustaining defendant's demurrer to
on account of this error, he should ha
motion for a new trial. Said court's o
motion is therefore reversed, and this
to that court with directions to grant pla
and proceed in a manner not inconsistent he

DAVISON, C.J., WILLIAMS, V.C.J., and IRWI
LAVENDER and SIMMS, JJ., concur.

HODGES, J., dissents.

CERTIFICATE OF SERVICE

This is to certify that on this 8th Day of March, 1974, a true and correct copy of the above and foregoing instrument was delivered into the United States Mail addressed to Joe H. Glasser, 1002 Broadway Tower, Enid, Oklahoma 73701, first class postage prepaid.

Stephen Jones

STEPHEN JONES

SUPREME COURT, U. S.
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FILED
APR 3
MICHAEL RODAK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. A-692

WESTMINSTER PRESBYTERIAN CHURCH OF ENID, ET AL.,
Petitioners,

VERSUS

PRESBYTERY OF CIMARRON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

RESPONDENT'S BRIEF IN OPPOSITION

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April, 1974

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RESPONDENT'S BRIEF IN OPPOSITION

QUESTIONS PRESENTED FOR REVIEW

1. Will the Oklahoma Supreme Court be permitted to adopt and follow for the first time *Watson* v. *Jones*, 80 U.S. 679 (1872),[1] along with most state and federal courts, as the controlling decision with respect to the role of civil courts in church property disputes?

2. Did the Oklahoma Supreme Court apply the *Watson* "rule of action" correctly by accepting as "final and binding" the decision of Respondent, Presbytery of Cimarron,[2] a church judicatory body, to dissolve the Westminster

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[1] Hereinafter cited as *"Watson."*
[2] Hereinafter cited as the *"Presbytery."*

Presbyterian Church of Enid,[3] and control its property "according to ecclesiastical rule, custom or law?"

STATEMENT OF THE CASE

The facts of this case are mostly undisputed. The Petitioners' "Statement of the Case" (Pet. 3-6) and the findings of the Oklahoma Supreme Court (Pet. App. IV-VIII) allude to the facts involved and Respondent does not propose to extend its remarks by submitting an extended "Statement of the Case" to a point of being redundant as to the relevant facts involved.

The facts were introduced generally into the record by joint stipulation of the parties. The Respondent respectfully suggests that the points and issues raised could be submitted herein in summary form as follows:

I. Summary of the Case

This case involves a dispute between the parties as to the ownership of two parcels of real property (and the appurtenances and improvements thereunto belonging) following the formal dissolution of the "Westminster Church" by "the Presbytery" as the highest judicatory body to whom the dispute was referred under and according to the Constitution of the United Presbyterian Church in the United States of America.[4]

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[3] Hereinafter cited as the *"Westminster Church."*

[4] Hereinafter cited as the *"United Presbyterian Church."* In 1958 the United Presbyterian Church of North America and the Presbyterian Church in the United States of America merged to form the United Presbyterian Church in the United States of America.

II. Summary of the Facts

A. The "hierarchical nature" of the *United Presbyterian Church*

The United Presbyterian Church is a religious society composed of lay members and clerical members who are organized under laws, rules, and regulations compiled in a "Constitution" designated as "The Book of Order" (Pet. App. VIII).

Within this united sovereign church are various components with the congregation being considered only as a subordinate member of a general church organization in which superior ecclesiastical tribunals exercise general and ultimate power of control as "judicatories" over the whole membership.

The four "judicatory" tribunals within the United Presbyterian Church are in ascending order as follows:

(1) The "session" composed of elected elders of the local church and the pastor who presides at all meetings.

(2) The "Presbytery" composed of representative delegates from several member churches within a geographic area.

(3) The "Synod" composed of member "Presbyteries" in organized groups within a larger geographic area.

(4) The "General Assembly" which is the supreme governing body composed of elected members from all of the particular churches and judicatories within the United Presbyterian Church.

B. "The Westminster Church"

The *Westminster Church* was organized in 1928 in affiliation with and a part of the Presbyterian Church of the United States of America. In this same year it was incorporated in Oklahoma and according to its Articles of Incorporation its sole purpose was to form a "local church for religious worship affiliated with and a part of the Presbyterian Church of the United States of America" (Pet. App. IV).

Title in ownership of two parcels of real estate was separately acquired by standard conventional warranty deeds without expressed reservation, reversion or other limitation. The sanctuary property was acquired in 1928 (Pet. App. IV) and the manse property was purchased in 1963 (Pet. App. V).

From its organization in 1928 through its forty-one years of existence it received financial aid as a "National Mission Aid Church" of the *Presbytery* (Pet. App. V).

On the weekend of July 4, 1969, the pastor of the *Westminster Church* contacted the Chairman of the "Presbytery's National Mission Committee to report a financial crisis." Thereafter several meetings between the session of the *Westminster Church* and the "Committee" convened to attempt to solve the financial problems (Pet. App. V).

The "Committee" recommended to the Presbytery that the *Westminster Church* be dissolved because of its serious financial difficulties and on November 7, 1969, in called meeting the *Presbytery* as a "higher judicatory body" of

the *United Presbyterian Church* voted to dissolve the *Westminster Church* and mandated the following actions:

"(1) that the final worship service of the Enid church be held December 28, 1969;

"(2) that said Church's Session issue letters to the members of its congregation authorizing transfers of their memberships to other congregations of the United Presbyterian Church in the United States of America; and

"(3) that the Trustees of the Enid Church transfer to plaintiff all properties then held by that Church" (Pet. 5).

C. The action taken by Respondent Presbytery

Following the final church worship service on December 28, 1969, the *Presbytery* through its delegated officials attempted to obtain deeds and other transfer papers to the real estate and other assets of the dissolved church. Such efforts were unsuccessful. On June 11, 1970, legal action was filed by the *Presbytery* to have a civil court determine and resolve finally the ownership of the church property involved in this dispute (Pet. App. VI).

Two weeks after suit was filed a minority number of members of this dissolved church met and voted "to declare ourselves an autonomous Presbyterian Church known as the Westminster Presbyterian Church in Enid, Oklahoma," and expressed their desire to keep the church property (Pet. App. VIII).

D. The proceedings below

The parties waived right to jury trial and when the trial judge called the case to hearing the parties presented written stipulations of fact with further oral stipulation that such method of proof would become a part of the record. The *Presbytery* as plaintiff introduced in evidence the constitution of the *United Presbyterian Church* and additional testimony of witnesses in regard to the "financial crisis" of the church, which prompted the formal action of the *Presbytery* to dissolve the *Westminster Church* (Pet. App. VIII).

When the *Presbytery* rested its case the *Westminster Church* as defendant, demurred to the evidence and the trial court without explanation, reason or conclusion of law sustained such demurrer. After its Motion for a New Trial was overruled by the trial court the *Presbytery* lodged appeal to the Supreme Court of the State of Oklahoma (Pet. App. VIII).

On October 9, 1973, the Oklahoma Supreme Court reversed the trial court with remand and direction to proceed in a manner not inconsistent with the *Watson* "rule of action" which the Court adopted as the law of Oklahoma. *Presbytery of Cimarron* v. *Westminster Presbyterian Church of Enid, et al.*, 515 P.2d 211.

ARGUMENT

I. Summary of the Argument

The Petition for Writ of Certiorari to the Supreme Court of the State of Oklahoma should be denied by this Court pursuant to Rule 19 of this Court because:

(1) the Oklahoma Supreme Court did not decide a substantial federal question which had not previously been decided by this Court;

(2) the decision of the Oklahoma Supreme Court is in accord with the applicable decisions of this Court;

and

(3) there are no other "special and important reasons" for granting certiorari in this case.

The Oklahoma Supreme Court based its decision in this case on the *Watson* "rule of action" and on "the better reasoned decisions" in harmony therewith in other jurisdictions (Pet. App. XIV).

The Oklahoma Supreme Court in applying *Watson* recognized correctly that the *United Presbyterian Church* has a "hierarchical structure" as its form of government and accepted as "final and binding" the ecclesiastical decision of Respondent *Presbytery* to dissolve the *Westminster Church* and control its affairs and its property.

In reaching the decision the Oklahoma Supreme Court was not called upon to resolve "religious beliefs or a departure from doctrine or practice" controversy. As that Court stated in its opinion the dispute "resulted from financial difficulties rather than from any differences in religious beliefs" (Pet. App. XV).

No other "special or important reasons" are shown by the Petitioners to cause this Court to grant their Petition. This case is not of national importance. Nor did the Oklahoma Supreme Court deny petitioners their religious freedom since each individual involved in whatever "schism"

occurred here was not prevented from withdrawing from the *United Presbyterian Church* to practice the religion of his choice elsewhere.

The Oklahoma Supreme Court adopted *Watson* and merely followed the "rule of action" of that landmark case in reaching its decision here.

II. Argument in Support of the Decision

A. The Oklahoma Supreme Court correctly interpreted and followed controlling decisions of this Court on the Role of Civil Courts in church property disputes.

The role of civil courts in church property disputes has been considered by this Court on several occasions and the landmark case decided more than 100 years ago is *Watson* which the Oklahoma Supreme Court adopted for the first time and followed here.

Watson arose out of a "schism" in the Louisville Presbyterian Church stemming from the issue of slavery. In upholding the faction in that church who remained loyal to the National Presbyterian Church *Watson* held that in a property dispute involving a church of hierarchical polity, the civil court must accept as "final and binding" in the cases before them the ecclesiastical decisions of the highest tribunal to which the dispute has been taken.

Watson classified three types of questions concerning the rights to property held by ecclesiastical bodies which had come before the civil courts as follows:

> "1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the prop-

erty is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.

"2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned owes no fealty or obligation to any higher authority.

"3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization." 80 U.S. at 722.

The *Watson* case involved the third type of these classes of which the Court said:

"The case before us is one of this class, growing out of a schism which has divided the congregation and its officers, and the presbytery and synod and which appeals to the courts to determine the right to the use of property so acquired . . . (Here is a case) of property purchased for the use of a religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property . . . *In cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments.* There are in the Presbyterian system of ecclesiastical

government, in regular succession, the Presbytery over the session or local church, the Synod over the Presbytery, and the General Assembly over all. These are called, in the language of the church organs, 'judicatories' and they entertain appeals from the decisions of those below, and prescribe corrective measures in other cases.

"*In this class of cases we think the rule of action which should govern the civil courts,* founded in a broad and sound view of the relations of the church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, *whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of judicatories to which the matter has been carried, the legal tribunals must accept such decision as final, and as binding on them, in their application to the case before them*" 80 U.S. at 726. (Emphasis added.)

The above "rule of action" to the effect that civil courts must accept the ecclesiastical decisions of a hierarchical church as "final" was further discussed by this Court which concluded:

"The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations and officers, within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if

> anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. *It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.*" 80 U.S. at 728. (Emphasis added.)

The "conclusiveness" of the *Watson* "rule of action" has been cited on several occasions with approval by this Court. In a case involving a question of authority in the selection of a chaplaincy where a Roman Catholic Archbishop's decision was denied review by a civil court, this Court stated:

> "In the absence of fraud, collusion or arbitrariness, the decisions of the proper Church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. *Gonzalez* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929), citing *Watson*."

In 1952 this Court converted the principles of *Watson* and *Gonzalez* in *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church of North America*, 334 U.S. 94, into a rule of federal constitutional law under the free exercise of religion clause of the First Amendment.

In the decades which followed the decision in *Watson* many states enacted "implied trust statutes" in regard to establishing statutory law which would recognize the own-

ership of church property in a general church in instances where a form of government was "hierarchical."

The "implied trust law" of the State of Georgia contained a condition, or an exception, whereby, if a general church might substantially depart from tenets of faith and practice which had existed at the time the local church affiliated with the general church, then the "implied trust" theory of ownership would terminate.

This Court granted certiorari to review this condition of the Georgia law in *Presbyterian Church in the United States of America, et al.* v. *Mary Elizabeth Blue Hull Memorial Church,* 393 U.S. 446,[5] and reaffirmed the principle of *Watson* while reversing the state court on First Amendment considerations. This Court stated:

> "The restraints of the First Amendment as applied to the states through the Fourteenth Amendment do not permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine." 393 U.S. at 441.

Thus, *Hull Church* approved the "rule of action" in *Watson* and *Gonzalez* and quoted with approval that portion of Mr. Justice Brandeis' opinion in *Gonzalez* at page 447 where it was stated:

> "In the absence of fraud, collusion or arbitrariness, the decisions of the proper Church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest

[5] Hereinafter cited as *"Hull Church."*

made them so by contract or otherwise. *Gonzalez* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929), citing *Watson*."

Further, in *Hull Church* this Court recognized another approach to enable civil courts to resolve church property disputes based on "neutral principles of law." *Hull Church* explained such approach as follows:

> "Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are *principles of law, developed for use in all property disputes, which can be applied without establishing churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.*" 393 U.S. at 449. (Emphasis Added.)

In *Maryland and Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970),[6] Mr. Justice Brennan explained the choices civil courts may have in adopting either the "rule of action" of *Watson* and *Gonzalez* or "neutral principles of law" recognized in *Hull Church* as follows:

> "It follows that a state may adopt any one of various approaches for settling church property disputes so

[6] Hereinafter cited as *"Church of God."*

long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.

". . . Thus the States may adopt the approach of Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666 (1872), and enforce the property decisions made within a church of congregational polity 'by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government,' id., at 724 *and within a church of hierarchical polity by the highest authority that has ruled on the dispute at issue,* (Emphasis added) . . . Under *Watson* civil courts do not inquire whether the relevant church governing body has power under religious law to control the property in question. Such a determination, unlike the identification of the governing body, frequently necessitates the interpretation of ambiguous religious law and usage." 396 U.S. 368.

or

"(N)eutral principles of law, developed for use in all property disputes . . ."

or a state may pass

". . . (S)pecial statutes governing church property arrangements in a manner that precludes state interference in doctrine [provided that] (S)uch statutes must be carefully drawn to leave control of ecclesiastical polity, as well as doctrine, to church governing bodies." 396 U.S. at 370.

There is no question that this Court in *Hull Church* approved the *Watson* "rule of action." Nevertheless if it would ever be contended by a strained construction that *Hull Church* replaced *Watson* "rule of action" with "neu-

tral principles of law" such notion will be dispelled by *Church of God* which recognized three choices a state may adopt to resolve church property disputes.

The Oklahoma Supreme Court properly adopted the *Watson* "rule of action" as the choice of this state of the three alternatives recognized in *Church of God* to be followed in resolving church property disputes.

III. Argument in Answer to Petitioners

The petitioners rely upon three propositions for granting the writ of certiorari.

None is tenable and the argument in support of each "reason" is without substance in view of the application of the *Watson* "rule of action."

Respondent answers the argument under the following heading:

A. Constitutional guidelines were followed by the Oklahoma Supreme Court in resolving this church property dispute.

The petitioners suggest in "Reasons 1 and 2" that secular law of property and not ecclesiastical law consideration controls and that the *Watson* "rule of action" does not apply to property.

In its decision the Oklahoma Supreme Court after adopting *Watson* stated a forceful significant summary of the law as follows:

> "(A)nd it is our opinion, in accord with our quotation from Watson v. Jones, supra that when the Westminster Presbyterian Church of Enid, Oklahoma—or its members for it—petitioned the Presbyterian Church

of the United States in America for, and was granted affiliation with the National church organization, it impliedly and in effect (if not expressly) agreed to abide by the national church's constitution and regulations. As, at the time the present controversy arose, the Enid church was an integral part of the larger church organization, *it is bound* under that church's hierarchical form of government or polity, by its constitution and its judicatory decisions. *We think this conclusion is supported by the weight of all the better reasoned decisions.*" (Emphasis added.) (Pet. App. XIV).

The *Hull Church* decision was handed down in 1969 at a time contemporary to the "financial crisis" encountered by the *Westminster Church*. After this church was dissolved by the *Presbytery* on November 7, 1969, the "neutral principles of law" and "autonomous church" phrases of *Hull Church* became the subject of debate as to whether the effect of the decision qualified *Watson* to such extent that the "rule of action" was replaced by a new concept.

It is a reasonable inference that the *Hull Church* case prompted the "small group" of former *Westminster Church* members to try to form an "autonomous Presbyterian Church."

Significantly, in its decision the Oklahoma Supreme Court determined that it was unnecessary to apply or "recognize" the secular law of Oklahoma and that the *Hull Church* decision was not of "significant assistance in this case" (Pet. App. XV). The "choice" of *Watson* by the Oklahoma Supreme Court in harmony with *Church of God* was clear and emphatic and the rejection of any consideration

of the *Hull Church* decision made the contention of Petitioners' untenable.

Contrary to the argument of the petitioners, the law has been settled for more than 100 years by *Watson* that "ecclesiastical rule, custom," or law "is controlling upon civil courts with respect to decisions in church property disputes."

The *Watson* "rule of action" goes to the very core of the *United Presbyterian Church* constitutional provision as noted by the Oklahoma Supreme Court in its decision as follows:

> "Section 62.11 of the Book of Order of the *United Presbyterian Church* provides:
>
> * * * * * *
>
> "(c) Whenever . . . 'a particular church' is formally dissolved by the Presbytery . . . such property as it may have both real and personal, shall be held, used and applied for such purposes and trusts as the Presbytery may direct, limit and appoint and such property may be sold or disposed of as the Presbytery may direct in conformity with the Constitution of the United Presbyterian Church in the United States of America" (Pet. App. VI-VII). (Omitted Portion intended.)

B. The hierarchical nature of the Presbyterian Church

The petitioners contended that the former members of this dissolved Presbyterian church had a right to disassociate with the national church and maintain an independent character as well as to continue in the possession and ownership of church property (Pet. 10-11).

The Oklahoma Supreme Court in its decision answered this proposition of Petitioners' correctly wherein it is stated:

> ". . . It is also our opinion that if, when a local church voluntarily becomes an integral part of a national hierarchical church, it is thereafter bound by the latter's constitution and its judicatories' decisions, the holding of its property is likewise controlled by such provisions of said constitution and the authorized mandates of said judicatories. . . ."

The facts in this case are undisputed and according to Presbyterian Church law *Westminster Church* was properly organized as a Presbyterian Church; incorporated in the State of Oklahoma with "its sole purpose" to be affiliated with the *United Presbyterian Church;* that it continued such affiliation for more than forty years; and was dissolved according to Presbyterian Church law. Any attempt to convert this "hierarchical" church to a "congregational" church having an independent form of government wherein the members owe no fealty or obligation to any higher authority has not been permitted by this Court or by any other state court. To permit such conversion would destroy the First and Fourteenth Amendment considerations in every church dispute.

The dissatisfied members of this dissolved Presbyterian church were privileged to withdraw voluntarily as members of the general *United Presbyterian Church* society and to worship elsewhere wherever such individual would desire but such members cannot be permitted to retain imagined rights to church property following proper dissolution.

C. Rule 19 of this Court should be applied.

The petition for writ of certiorari to the Supreme Court of the State of Oklahoma should be denied pursuant to Supreme Court Rule 19 because:

(1) The Oklahoma Supreme Court did not decide a federal question which had not been previously decided by this Court;

(2) The decision of the Washington Supreme Court is in accord with applicable decisions of this Court;

(3) There are no "special or important reasons" shown by petitioners for granting certiorari in the case.

For the first time the Oklahoma Supreme Court adopted and followed *Watson* "rule of action" with respect to the role civil courts may take in resolving church property disputes. This decision does not conflict with the applicable decisions of this Court or of any other court.[7]

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[7] Since *Hull Church* the following cases in the few jurisdictions indicated have followed *Watson* "rule of action."

Pennsylvania: *St. John Chrysostom Greek Catholic Church of Pittsburg* v. *Elko*, 436 Pa. 243, 259 A.2d 419 (1969), *cert. denied, Dober* v. *Elko*, 399 U.S. 920 (1970); *Western Pennsylvania Conference of the United Methodist Church* v. *Everson Evangelical Church of North America: Western Pennsylvania Conference of United Methodist Church* v. *Mount Evangelical Church of North America*, 132 A.2d 35.

Washington: *Presbytery of Seattle, Inc.* v. *Rohrbaugh*, 79 Wn.2d 367, 485 P.2d 615 (1971), *cert. denied* 405 U.S. 996, *rehearing denied* 406 U.S. 939.

New York: *Second United Presbyterian Church of Johnstown* v. *Presbytery of Albany*, 35 A.2d 252, 315 N.Y.S.2d 428 (1970).

Illinois: *William H. Lowe, et al.* v. *First Presbyterian Church of Forest Park, a corporation, et al.* (1974) (Reporter Citation not available).

The approach taken was one of the three approaches recognized by this Court in *Hull Church* and approved in the *per curiam opinion* and (concurring opinions) in *Church of God.*

CONCLUSION

The Oklahoma Supreme Court adopted and followed the *Watson* "rule of action" as permitted by *Hull Church, Church of God,* and other relevant decisions of this Court.

There is no federal question of substance in this case which has not already been determined by this Court.

Petitioners have failed to show "special and important reasons" for this Court to grant their petition for a writ of certiorari.

For the foregoing reasons the petition should be denied by this Court.

Respectfully submitted,

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April, 1974

CERTIFICATE OF SERVICE

This is to certify that on this ..... day of April, 1974, three true and correct copies of the above and foregoing Brief in Opposition were delivered into the United States Mail, addressed to Stephen Jones, Post Office Box 3339, Enid, Oklahoma 73701 (attorney for petitioners) first class postage prepaid.

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Joe H. Glasser